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To comply with U.S. Department of Education's
Non-Regulatory Guidance on Unsafe School Choice Option*

UNSAFE SCHOOL CHOICE OPTION

"PERSISTENTLY DANGEROUS SCHOOLS"

I. Introduction

The Unsafe School Choice Option (section 9532 of the Elementary and Secondary Education Act (ESEA) of 1965, as amended by the No Child Left Behind Act of 2001) requires that each State receiving funds under the ESEA establish and implement a statewide policy requiring that students attending a persistently dangerous public school, or students who become victims of a violent criminal offense while in or on the grounds of a public school that they attend, be allowed to attend a safe public school.

With the input of school superintendents throughout the state, the OPI has adopted the following definition for Montana:

"Persistently dangerous public elementary school or secondary school," in the context of the No Child Left Behind Act of 2001 (ESEA), a Montana public elementary or secondary school is considered to be persistently dangerous if each of the following two conditions exist:

- (1) in each of three consecutive years, the school has a federal or state gun-free schools violation or a violent criminal offense has been committed on school property, and
- (2) in any two years within a three-year period, the school has experienced expulsions for drug, alcohol, weapons or violence that exceed one of the following rates –
 - (a) more than five expulsions for a school of less than 250 students,
 - (b) more than 10 expulsions for a school of more than 250 students but less than 1000 students, or
 - (c) more than 15 expulsions for a school of more than 1,000 students.

A student attending a persistently dangerous public elementary or secondary school OR a student who becomes a victim of a violent criminal offense while in or on the grounds of the public school that student attends must be allowed to attend a safe public school within the local educational agency.

For the purpose of this definition, a "violent criminal offense" shall mean homicide, rape, robbery, and/or aggravated assault.

ESEA reference: Title IX, Part E – Uniform Provisions, Subpart 2, Section 9532 (specifically identified as the Unsafe School Choice Option) Public Law 107-110, Sec. 9531, 115 Stat. 1425, 1984-1985.

II. Identification of Persistently Dangerous Schools

OPI is responsible for identification of persistently dangerous schools using the objective criteria contained within the definition. Data collection for this purpose will be through the School Discipline Report submitted by schools each year in June. The form has been amended to capture the elements required by the federal law. The codes were developed by the National Center for Education Statistics; a glossary will accompany the form. Training and technical assistance are available from OPI to assist schools in completing the form correctly.

The U.S. Department of Education requires annual accounting from OPI regarding the number of schools determined to have met the state's definition of persistently dangerous (individual schools are not identified). The basis for the federal report will be the data drawn from the annual School Discipline Report.

OPI is required to annually reassess a school determined to be persistently dangerous, using criteria contained in the definition, based upon the School Discipline Report. The persistently dangerous designation will be removed at the time that the school no longer qualifies under the state definition.

III. Providing a Safe Public School Choice Option

A local education agency (LEA) identified as a persistently dangerous school must, in a timely manner, and no later than 14 calendar days before the start of the school year:

- a) Notify parents of each student attending the school that the state has identified the school as persistently dangerous;
- b) Offer all students the opportunity to transfer to a safe public school within the LEA. If there is not another school in the LEA, the LEA is encouraged, but not required, to explore other options such as an agreement with a neighboring LEA to accept transfer students;
- c) For those students who accept the offer, complete the transfer.

In addition, an LEA must also:

- d) Develop a corrective action plan; and
- e) Implement the plan in a timely manner.

Parental notification regarding the status of the school and the offer to transfer students may be made simultaneously.

In the case of transfers:

- LEAs should allow students to transfer to a school that is making adequate yearly progress and is not identified as being in need of school improvement, corrective action, or restructuring.
- Transfers may be temporary or permanent, but must be in effect as long as the original school is identified as persistently dangerous.
- When there is not another school in the LEA for the transferring student, LEAs are encouraged, but not required, to explore other options such as an agreement with a neighboring LEA to accept the student(s).

IV. Timely Implementation

Although depending on the specific circumstances within the LEA, general notification to parents should be within ten school days from the time the LEA is notified by OPI that the school has been identified as persistently dangerous.

Development of a corrective action plan and the offer to students to transfer generally should occur within twenty days from the time that the LEA is notified by OPI that the school has been identified as persistently dangerous. In all cases, the option to transfer to a safe school must be offered at least 14 calendar days before the start of each school year.

Transfers of students generally should occur within 30 school days.

V. Corrective Action Plans

LEAs must submit a corrective action plan to OPI for approval. The OPI will provide technical assistance and monitor the LEA's actions throughout the process.

Upon completion of a planned corrective action, the LEA must apply to OPI to have the school removed from the list of persistently dangerous schools. OPI will use the criteria contained in the definition of persistently dangerous schools to determine whether the school should be removed from the list.

VI. Students who have been Victims of a Violent Criminal Offense

LEAs must provide safe school options to a student who has been a victim of a violent criminal offense while in or on the grounds of a public school that the student attends:

- The LEA should, within ten days, offer an opportunity to transfer to a safe public school within the LEA. In all cases the offer to transfer must be made, at a minimum, at least 14 calendar days prior to the start of the school year.
- When another school is not available within the LEA, it is encouraged, but not required, that the LEA seek other appropriate options such as an agreement with a neighborhood LEA to accept the student.

The federal statute does not authorize resources specifically to help cover costs such as transportation to assist the transferring student. Under certain circumstances, other federal funds may be used, such as Title IV Part A or Title V Part A. Contact the OPI (specifically the Division of Health Enhancement and Safety's Safe and Drug-Free Schools Program) for further guidance on this option.

LEAs are also encouraged to work with local victim assistance programs to determine if they have services or funds available to help students in these circumstances. LEAs should contact their local county attorney's office to locate such programs in their area.